

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHARON A. REED)	
Claimant)	
VS.)	
)	
U.S.D. 470)	
Respondent)	Docket No. 251,913
)	
AND)	
)	
KS ASSOCIATION OF SCHOOL BOARDS AND)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carriers)	

ORDER

The respondent and one of its insurance carriers, Liberty Mutual Insurance Company (Liberty) appeal from the January 3, 2002 Award entered by Administrative Law Judge (ALJ) John D. Clark. The Appeals Board (Board) heard oral argument on July 23, 2002. Gary Peterson was appointed and participated in this case as a Board Member Pro Tem.

APPEARANCES

Steven R. Jarrett of Overland Park, Kansas, appeared for claimant. Anton C. Andersen of Kansas City, Kansas, appeared for respondent and Kansas Association of School Boards (KASB). Janelle Jenkins Foster of Wichita, Kansas, appeared for respondent and Liberty.

RECORD AND STIPULATIONS

The Board considered the record and adopts the stipulations listed in the Award.

ISSUES

1. Whether claimant suffered personal injury on the dates of the alleged accidents.
2. Whether claimant's alleged accidental injuries arose out of and in the course of her employment.
3. The nature and extent of claimant's disability, including whether claimant's psychological condition is directly traceable to her physical injury. Stated another way, did claimant's work-related injuries, including bi-lateral carpal tunnel syndrome and bi-lateral cubital tunnel syndrome, aggravate, accelerate or worsen her preexisting psychological condition.
4. Whether claimant is entitled to additional temporary total disability compensation.
5. Whether claimant is entitled to medical compensation, including, unauthorized and future medical benefits.¹
6. Is respondent's other insurance carrier, KASB, entitled to reimbursement from Liberty or from the Kansas Work Comp Fund for payments it made for medical treatment incurred and weeks of temporary total disability after its period of coverage ended?²

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds the ALJ's Award should be modified as to which insurance carrier is liable for the payment of certain medical and temporary total disability benefits, but should otherwise be affirmed. The findings of facts and conclusions of law set forth by the ALJ in the Award are supported by the record and the law. It is not necessary to repeat those findings and conclusions in this Order. The Board approves those findings and conclusions and adopts them as its own.

Claimant started working for respondent full time in 1984 as a bookkeeper and secretarial duties were eventually added. Claimant testified that her job required her to do a large amount of computer work, including data entry. She also did bookkeeping for federal programs during the summer months, and was the school secretary. March 17,

¹ Respondent and Liberty Mutual Insurance Company's Application for Board of Appeals Review and Docketing Statement (filed Jan. 14, 2002).

² Cross Appeal of U.S.D. 470 and Kansas Association of School Boards (filed Jan. 17, 2002).

1998 was the last day she worked for respondent. On that date claimant suffered seizures and was hospitalized.

Claimant has a history of neurological and emotional problems beginning in 1993, when she was hospitalized with uncontrolled seizures. At that time, claimant was seen by a psychiatrist and continued for a time with therapy and medication and was diagnosed with depression and conversion disorder. There were no abnormalities evident on a September 1993 MRI of the brain. At the time of discharge, claimant's diagnosis was major depression, prolonged post-traumatic stress syndrome, conversion disorder, dependent personality and questionable seizures. In November 1993, claimant was having paranoia of a delusional nature. Claimant was referred to Dr. Dwight St. Clair, a psychiatrist, who diagnosed major depressive disorder complicated by anxiety. He prescribed medication. Following the treatment in 1993 claimant did not see a psychiatrist again until 1998.

Claimant recalls having ongoing problems with her arms beginning in 1996. At first she only experienced occasional pain at night; however, it eventually progressed to where she was not sleeping. Claimant testified that she tried to talk to an assistant superintendent, Mr. Van Arsdale about her symptoms on several occasions. Her talks with Mr. Van Arsdale concerning her need for treatment were unproductive initially, but eventually, in October 1996 Mr. Van Arsdale sent claimant to a neurologist, Dr. Abbas, for testing. Respondent had previously authorized claimant to see Dr. Ross, her family physician. He initially treated claimant conservatively, with splints, medication and therapy. However, none of the treatment appeared to improve her hands or arms and Dr. Ross returned claimant to work in October 1996 with restrictions of wearing wrist splints, no lifting heavy objects and to take frequent breaks. Claimant testified that respondent did not accommodate her restrictions.

In July 1997 claimant presented to the emergency room with more migraines and headaches. She was given a CAT scan of the brain that was interpreted as normal. She was diagnosed with seizure disorder.

In October 1997, claimant went to Arkansas City Clinic, where she complained of having had a seizure. This ostensibly occurred while sitting at her desk at work. She went back to Dr. Ross, who increased her medication dosage at that time. He also gave claimant another medication. Claimant also complained to Dr. Ross that her hands were worsening. Dr. Ross recommended claimant wear Isotoner gloves and splints.

March 1998 claimant testified she had to take frequent breaks. Her workload increased, and respondent did not eliminate keyboarding work. She complained to the respondent of no feelings in her fingers. She also reported having constant pain in her wrists, arms, elbows and into her shoulders. On March 16, 1998, claimant saw Dr. Ross for an upper respiratory infection and trouble sleeping. She also complained of difficulty

in balancing and a slurring in her speech. However, at that time, she had no headaches and no seizure activity. On March 17, 1998 claimant was admitted to South Central Kansas Medical Center unconscious with uncontrolled seizures. Dr. Ross took her off work.

In April 1998, claimant was readmitted to South Central Kansas Medical Center.

May 1998 claimant went back into therapy with Dr. Connie Marsh, a psychiatrist with the University of Kansas Medical School. She saw Dr. Marsh for several months. Eventually, claimant told Dr. Marsh that she could no longer make the trips to Wichita, so Dr. Marsh recommended she return to Dr. Ross, who in turn helped her make the transition to go to Cowley County Mental Health Center. Cowley County Mental Health Center conducted an EEG which was normal. Claimant was initially evaluated at the Cowley County Mental Health Center in June 1998. Claimant's treatment continued there for several years. Claimant's therapist was Marya Allen who continues to see claimant on average every two or three months.

Richard Wallace, M.D., a psychiatrist, is the medical director of the Cowley County Mental Health Center. Dr. Wallace oversaw claimant's treatment and managed her medications. Dr. Wallace is also the physician responsible for diagnosing claimant's condition. Dr. Wallace testified that when he saw claimant in September 1998 she was not capable of returning to work full time as a secretary and bookkeeper. Based upon her history, he believed there was a significant change in her condition sometime during late 1997 and the early part of 1998. He felt that claimant could not have done the bookkeeping job during any of 1997 and part of 1998 with the conditions he saw in September 1998. He believed something got worse. In his opinion, claimant's psychological condition is directly traceable to the work-related physical injury.

Q. (Mr. Jarrett) If we assume that Ms. Reed will testify that she did not have complaints in her arms before developing carpal tunnel syndrome, and then after she developed that syndrome, you have found that she has exaggerated complaints based upon her psychological condition, would you believe that the exaggerated complaints from the somatoform disorder are directly traceable to the physical injury?

A. (Dr. Wallace) Yes.

On November 13, 1998 claimant was seen for the first time by orthopedic surgeon, J. Mark Melhorn, M.D., for problems with her hands and arms. She was referred to him by the insurance carrier through workers compensation. She described bilateral hand pain with the onset of symptoms to be approximately February 15, 1996.

Dr. Melhorn performed surgery January 11, 1999 for left carpal tunnel syndrome and left ulnar nerve entrapment at the elbow. On January 15, 1999 claimant underwent surgery on her right upper extremity for carpal tunnel syndrome and ulnar nerve entrapment at the elbow.

When claimant returned to Dr. Melhorn on June 15, 1999 she was still having intermittent symptoms. And on June 29, 1999 Dr. Melhorn injected claimant's right arm to relieve her ongoing symptoms. Dr. Melhorn continued to provide pain management until September 10, 1999, when he determined she had reached maximum medical improvement. Her work duties were reviewed and Dr. Melhorn determined she could do them and she was released. This is the last time Dr. Melhorn saw claimant. Based only upon her bilateral upper extremity injuries, Dr. Melhorn opined that claimant has a 10.4 percent impairment to the body as a whole.

On March 29, 2000 claimant was examined by P. Brent Koprivica, M.D., a specialist in occupational medicine. He diagnosed claimant with bi-lateral carpal tunnel syndrome and bi-lateral cubital tunnel syndrome for which she had undergone surgical releases at the wrist and elbow levels of both arms. In his opinion there was both a physical and psychological component to claimant's arm complaints. He rated claimant with a 25 percent impairment of function to the body as a whole for her physical injuries only.

It is well established that a mental disorder can be compensable under the Kansas Workers' Compensation Act when the mental problem is directly traceable to a work-related physical injury.³ Functional impairment may be either physical or psychological.⁴ Likewise, a work disability award must be based on the consideration of both the physical and the psychological impairment. When there has been a physical accident or trauma, and claimant's disability has increased or prolonged by traumatic neurosis, conversion hysteria, or hysterical paralysis, the full disability including the effects of the neurosis is compensable.⁵

Under the Workers Compensation Act, traumatic neurosis is to be treated like any other health problem. If a subsequent covered industrial accident

³ See *Followill v. Emerson Elec. Co.*, 234 Kan 79, 674 P.2d 1050 (1984); *Barr v. Builders Inc.*, 179 Kan. 617, 296 P.2d 1106 (1956).

⁴ See *Helmstetter v. Midwest Grain Products, Inc.*, 29 Kan. App. 2d 278, 28 P.3d 398 (2001).

⁵ See *Adamson v. Davis Moore Datsun, Inc. & USF&G Co.*, 19 Kan. App. 2d 301, 868 P.2d 546 (1994).

aggravates, accelerates, or intensifies the disease or affliction, the worker is not to be denied compensation just because it is a preexisting condition.⁶

Based primarily upon the testimony of claimant and the opinions of Dr. Wallace and Dr. Koprivica, the ALJ concluded that the psychological component to claimant's disability was compensable. The ALJ found that much of the stress and anxiety claimant suffered was due to the pain and disability associated with her work-related physical injuries. As such, the worsening of her psychological condition was directly traceable to her work-related physical injuries. The Board agrees and finds that claimant is realistically unemployable and, therefore, permanently and totally disabled as a direct result of the combination of her work-related physical injuries and the aggravation of her preexisting psychological condition.

Claimant alleged a series of accidents beginning January 1, 1996 and continuing each and every working day through March 17, 1998. Respondent and the KASB are responsible for any temporary total disability compensation paid or payable and all of claimant's authorized and related medical expenses incurred during its period of coverage, January 1, 1996 through June 30, 1997. Thereafter, respondent and Liberty are responsible for claimant's benefits. The ALJ found claimant's date of accident for purposes of computing permanent disability compensation should be the last day claimant worked.⁷ As this was during Liberty's period of coverage, the Board agrees with the ALJ that Liberty is responsible for payment of those and all future benefits.

Liberty shall reimburse KASB for any authorized or ordered medical treatment expenses incurred and temporary total disability compensation benefits paid by KASB for dates after KASB's coverage ended and Liberty's coverage began.⁸

Award

WHEREFORE, except as to the payment of medical and temporary total disability compensation for the period before Liberty Mutual Insurance Company's coverage, as explained above, the Appeals Board affirms the January 3, 2002 Award entered by Administrative Law Judge John D. Clark.

⁶ See *Boutwell v. Domino's Pizza*, 25 Kan. App. 2d 110, Syl. ¶ 3, 959 P.2d 469, rev. denied 265 Kan. 884 (1998).

⁷ See *Treaster v. Dillon Companies, Inc.*, 267 Kan. 610, 987 P.2d 325 (1999).

⁸ See *Lott-Edwards v. Americold*, 27 Kan. App. 2d 689, 6 P.3d 947 (2000); See also *Marsha L. Kelley v. Kinedyne Corporation*, Docket No. 255,564 2000 WL 1929350 (Kan. WCAB Dec. 11, 2000).

IT IS SO ORDERED.

Dated this _____ day of May 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Steven R. Jarrett, Attorney for Claimant
Anton C. Andersen, Attorney for Respondent and Ks. Assoc. of School Boards
Janelle Jenkins Foster, Attorney for Respondent and Liberty Mutual
John D. Clark, Administrative Law Judge
Director, Division of Workers Compensation